APPENDIX

JUDGMENT ORDER OF THE SUPREME COURT OF PENNSYLVANIA MIDDLE DISTRICT

NO. 48 M.D. ALLOCATUR DOCKET 1982

EMORY D. STINE,
Petitioner

vs.

MARY E. CROSS,
Respondent

Appeal from the Order of the Superior Court Entered on June 25, 1982 in the case docketed to No. 146 Harrisburg, 1981

Order denying the Petition for Allowance of Appeal dated October 8, 1982

ORDER DENIED
Per Curiam

J. 2149/81 - 1

EMORY D. STINE,
Appellant

vs.

MARY E. CROSS,
Appellee

IN THE SUPERIOR COURT OF PENNSYLVANIA

No. 146 Harrisburg, 1981

EMORY D. STINE,
Appellant

vs.

TOWNSHIP OF SWATARA and the COMMISSIONERS OF THE TOWNSHIP OF SWATARA, and ROBERT L. WALMER, and DONALD H. HORNER,
Appellees

IN THE SUPERIOR COURT OF PENNSYLVANIA

No. 147 Harrisburg, 1981

Appeal from the Order of the Court of Common Pleas, Civil Action Law, No. 3280 S, 1979 and No. 59 S, 1980.

BEFORE: BROSKY, WIEAND AND MONTEMURO, JJ.

MEMORANDUM OPINION:

FILED: June 25, 1982

These actions are consolidated for appeal. The basis of both suits arose out of the same incident.

On November 8, 1978, three citations were issued to appellant Stine: (1) operating a golf cart on a highway, (2) not having the golf cart inspected, and (3) driving without a license. On January 4, 1979, appellant appeared in court on those charges before District Justice Mary Cross and was found guilty on all three charges. At the end of the hearing, the existence of two zoning citations which had been issued approximately fifteen (15) months earlier, but never executed, were brought to the attention of the court. As a result, District Justice Cross set a bond of one hundred and fifty ($150) dollars on the Zoning Code citations. Appellant only had ninety-three ($93) dollars on his person. District Justice Cross gave appellant ten minutes to get the balance of the money. Appellant requested the Chief of Police and another officer to take him to his home about a mile away to get the rest of the money. They refused.

Appellant was taken to Dauphin County Prison where his clothes and personal effects were taken away, and he was given prison clothes and placed in a cell for about three hours until the balance of the bond money was supplied. Appellant is an 80 year old man, a longtime resident, and an owner of real estate in Swatara Township.

After a subsequent conviction before District Justice Cross on the Zoning Code Violation, appellant took an appeal on all five convictions to the Court of Common Pleas of Dauphin County. The Zoning Code convictions were reversed and the Motor Vehicle Code convictions were affirmed.

Appellant Stine then instituted two actions in trespass separately against District Justice Cross and the Township of Swatara, the Commissioners of the Township of Swatara, Robert L. Walmer and David H. Horner. Judgment on the pleadings was granted and the case dismissed as to appellee Cross.

In the other action, preliminary objections in the nature of a demurrer was granted as to appellees and the case was dismissed. While not sanctioning the conduct of appellee Cross, we affirm the Orders of the court below.

It is well settled that judicial immunity is an absolute bar to an action against a judicial officer for his acts, unless it can be shown that the officer was acting in the clear absence of all jurisdiction. See *Petition of Dwyer,* 486 Pa. 585, 406 A.2d 1355 (1979), *Petition of McNair,* 324 Pa. 48, 187 A.493 (1936), *Strump v. Sparkman,* 435 U.S. 815, 98 S.Ct. 1099, 55 L Ed.2d. 331 (1978) Rehearing Denied. 436 U.S. 951, 98 S.Ct. 2862, 56 L Ed.2d 795 (1978). There is no allegation here that appellee Cross did not have jurisdiction over the matters before her court. Because she was acting within her jurisdiction, her acts, however improper, are absolutely immune from civil liability.

Regarding the second action, the complaint fails to state a cause of action against any of the appellees. The Township Commissioners, as high public officials, are immune from liability under the facts of this case. *Matson v. Margiotti,* 371 Pa. 188, 88 A.2d 892 (1952). It is also clear that Mr. Walmer escorted appellant to jail pursuant to the order of appellee Cross, which as previously discussed, she clearly had the authority to issue.

While the action of District Justice Cross may not have been necessary to secure the appearance of appellant at trial, we conclude that those actions fail to give rise to liability on the part of the appellees.

Orders affirmed.

EMORY D. STINE, *Plaintiff*	IN THE COURT OF COMMON PLEAS OF DAUPHIN COUNTY, PENNSYLVANIA
vs.	CIVIL ACTION - LAW
MARY E. CROSS, *Defendant*	No. 3280 S 1979

MEMORANDUM

This action is brought against a district magistrate and seeks damages for humiliation caused by the imprisonment of plaintiff in connection with his conviction of certain summary offenses under the Motor Vehicle Code. The defendant has filed a motion for judgment on the pleadings based upon the defense of judicial immunity, and plaintiff does not dispute that defendant is a district justice or that the subject matters are within her jurisdiction.

We have concluded the motion must be granted. Plaintiff relies upon cases which involve the abrogation of certain aspects of sovereign (executive) immunity. These cases have not impaired the sanctity of *judicial* immunity where the proceeding is within the jurisdiction of the officer involved and the act complained of is a function normally performed in the discharge of judicial duties.[1] The United States Supreme Court decision in *Stump v. Sparkman*, 435 U.S. 349, 98 S.Ct. 1099 (1978) is controlling and will be followed by us in ruling on defendant's motion.

William W. Caldwell, J.

Date: April 8, 1981

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[1] From the pleadings and briefs it is fair to state that in the instant case Mrs. Cross set bond for the defendant ($150.00) following his arrest on two zoning citations. This occurred in her office at the conclusion of a hearing on certain unrelated motor code violations. Defendant asked permission to be released to go home to get the necessary funds but his request was refused. When he was unable or unwilling to otherwise post bail he was taken to the Dauphin County Prison where he was incarcerated for about three hours before making bail.